

chapter, is exempt from the requirements of the Act.

*Examples to paragraph (a):* 1. A and B each have the right to 50% of the profits of partnership X. A also holds 100% of the voting securities of corporation Y. A pays B in excess of \$50 million in cash (as adjusted) and transfers certain assets of X to Y. Because A is the acquiring person through its control of Y, pursuant to §801.1(b)(1)(i), and one of the acquired persons through its control of X pursuant to §801.1(b)(1)(ii), the acquisition of assets is exempt under §802.30(a).

2. A and B each have the right to 50% of the profits of partnership X. A contributes assets to X valued in excess of \$50 million (as adjusted). B contributes cash to X. Because B is an acquiring person but not an acquired person, its acquisition of the assets contributed to X by A is not exempt under §802.30(a). However, A is both an acquiring and acquired person, and its acquisition of the assets it is contributing to X is exempt under §802.30(a).

(b) The formation of any wholly owned entity is exempt from the requirements of the Act.

(c) For purposes of applying Sec. 802.4(a) to an acquisition that may be reportable under Sec. 801.40 or Sec. 801.50, assets or voting securities contributed by the acquiring person to a new entity upon its formation are assets or voting securities whose acquisition by that acquiring person is exempt from the requirements of the Act.

*Examples to paragraph (c):* 1. A and B form a new partnership to which A contributes a manufacturing plant valued at \$102 million and acquires a 51% interest in the partnership. B contributes \$98 million in cash and acquires a 49% interest. B is not acquiring non-corporate interests which confer control of the partnership and therefore is not making a reportable acquisition. A is acquiring non-corporate interests which confer control of the partnership, however, the manufacturing plant it is contributing to the formation is exempt under §802.30(c) and the cash contributed by B is excluded under §801.21, therefore, the acquisition of non-corporate interests by A is exempt under §802.4.

2. A and B form a new corporation to which A contributes a plant valued at \$120 million and acquires 60% of the voting securities of the new corporation. B contributes a plant valued at \$80 million and acquires 40% of the voting securities of the new corporation. While the assets contributed to the formation are exempted by §802.30(c) for each of A and B, the new corporation holds more than \$50 million (as adjusted) in non-exempt assets (the plant contributed by the other per-

son) with respect to both acquisitions. A is now acquiring voting securities of an issuer which holds \$80 million in non-exempt assets (the plant contributed by B), and B is acquiring voting securities of an issuer which holds \$120 million in non-exempt assets (the plant contributed by A). Therefore neither acquisition of voting securities is exempt under §802.4. Note that in contrast to the formation of the partnership in Example 1, B is not required to acquire a controlling interest in the corporation in order to have a reportable transaction.

3. A and B form a 50/50 partnership. A contributes a plant valued at \$100 million and B contributes a plant valued at \$40 million and \$60 million in cash. Because with respect to A, the new partnership has non-exempt assets of \$40 million (the plant contributed by B), A's acquisition of non-corporate interests is exempt under §802.4. With respect to B, the new partnership holds in excess of \$50 million (as adjusted) in non-exempt assets (the plant contributed by A), therefore B's acquisition of non-corporate interests would not be exempt under §802.4.

[70 FR 11513, Mar. 8, 2005]

#### **§ 802.31 Acquisitions of convertible voting securities.**

Acquisitions of convertible voting securities shall be exempt from the requirements of the act.

*Example:* This section applies regardless of the dollar value of the convertible voting securities held or to be acquired. Note, however, that subsequent conversions of convertible voting securities may be subject to the requirements of the act. See §801.32.

[43 FR 33544, July 31, 1978, as amended at 66 FR 8694, Feb. 1, 2001]

#### **§ 802.35 Acquisitions by employee trusts.**

An acquisition of voting securities shall be exempt from the notification requirements of the act if:

(a) The securities are acquired by a trust that meets the qualifications of section 401 of the Internal Revenue Code;

(b) The trust is controlled by a person that employs the beneficiaries and,

(c) The voting securities acquired are those of that person or an entity within that person.

*Examples:* 1. Company A establishes a trust for its employees that meets the qualifications of section 401 of the Internal Revenue Code. Company A has the power to designate